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August 24, 2005



By Express Mail (EV606062146US)

08-24-2005

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #57

BOX TTAB FEE
Commissioner for Trademarks
P.O Box 1451
Alexandria, VA 22313-1451

Attention: Trademark Trial and Appeal Board

Re: Padres L.P.
Notice of Opposition Against
Brian Keith Gillooly's
Application to Register WESTERN METAL SUPPLY COMPANY
Attorney Ref. No. 21307.022

Dear Commissioner:

We enclose an original Notice of Opposition against Application Serial Number 78/403,114, published in the Official Gazette of April 26, 2005. We also enclose a check to cover filing fees.

If the enclosed check is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

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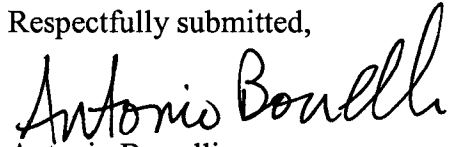
Commissioner for Trademarks

August 24, 2005

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Kindly confirm receipt of this opposition by returning the attached postcard and address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,



Antonio Borrelli

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)

Ref. No. 21307.022

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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PADRES L.P.,
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Opposer,
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v.
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:
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BRIAN KEITH GILLOOLY,
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:
:
Applicant.
:
-----X

NOTICE OF OPPOSITION

Opposition No.

Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, Padres L.P. ("Opposer"), a Delaware limited partnership, located at 100 Park Boulevard, San Diego, California 92101, believes that it will be damaged by registration of the word mark WESTERN METAL SUPPLY COMPANY in International Class 5 for "alloys of precious metals for dental purposes," shown in Application Serial No. 78/403,114 (the "Application"), and having been granted an extension of time to oppose up to and including August 24, 2005, hereby opposes the same.

"Express Mail" Mailing Label Number EV 606 062 146 US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on

8/24/05
(Date of Deposit)

Deborah A. O'Hara
(Print name)

Deborah A. O'Hara
(Signature)

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned SAN DIEGO PADRES MAJOR LEAGUE BASEBALL club.

2. Since prior to April 16, 2004, Applicant's constructive first use date, Opposer, its affiliated and related entities, licensees and/or sponsors, have used the mark WESTERN METAL SUPPLY CO. ("Opposer's WESTERN METAL SUPPLY CO. Mark") in connection with baseball game and exhibition services rendered live and through various broadcast media and in connection with a variety of goods and services, including, without limitation, apparel and beverageware. Opposer's WESTERN METAL SUPPLY CO. Mark identifies a unique historic portion of Opposer's stadium facility that has been widely publicized and has become well known to consumers, fans, the media and the public and press as designating Opposer, its stadium facility and its foods and services.

3. Opposer owns U.S. Federal Registration No. 2,976,371 and U.S. Application Serial No. 75/786,554 for Opposer's WESTERN METAL SUPPLY CO. Mark in International Classes 25 and 41.

4. Since prior to April 16, 2004, Applicant's constructive first use date, Opposer, its affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer's WESTERN METAL SUPPLY CO. Mark, including, without limitation, stadium facilities, baseball games and exhibition services rendered live and through various broadcast media, and a variety of goods and services including, without limitation, apparel and beverageware, and have sold or distributed such goods and rendered such services in commerce.

5. As a result of such sales, promotion and publicity of the goods and services bearing or offered in connection with Opposer's WESTERN METAL SUPPLY CO. Mark,

Opposer has built up highly valuable goodwill in Opposer's WESTERN METAL SUPPLY CO. Mark, and said goodwill has become closely and uniquely identified and associated by consumers, fans, the media, press and the public with Opposer.

6. On April 16, 2004, Applicant Brian Keith Gillooly, also based in San Diego, California, filed the Application, based on an intent to use, to register the word mark WESTERN METAL SUPPLY COMPANY in International Class 5 for "alloys of precious metals for dental purposes."

7. Upon information and belief, Applicant did not use the mark WESTERN METAL SUPPLY COMPANY in connection with the goods covered in the Application prior to April 16, 2004, Applicant's constructive first use date.

8. The goods covered by the Application are sufficiently related to the goods and services offered in connection with Opposer's WESTERN METAL SUPPLY CO. Mark so that there would be a likelihood of confusion and may be sold an/or distributed in the same geographic area as Opposer's goods and services.

9. Applicant's WESTERN METAL SUPPLY COMPANY mark is virtually identical to and so resembles Opposer's WESTERN METAL SUPPLY CO. Mark so as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's WESTERN METAL SUPPLY COMPANY mark.

10. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant's WESTERN METAL SUPPLY COMPANY mark would falsely suggest a connection between Applicant and Opposer.

11. Opposer's WESTERN METAL SUPPLY CO. Mark is distinctive and famous and was so prior to April 16, 2004, Applicant's constructive first use filing date. Registration of Applicant's WESTERN METAL SUPPLY CO. mark will also injure Opposer by diluting the distinctive quality of Opposer's unique WESTERN METAL SUPPLY COMPANY Mark.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's WESTERN METAL SUPPLY COMPANY mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Antonio Borrelli (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
August 24, 2005

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 

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